

1 HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 MOD SUPER FAST PIZZA, LLC, a Delaware  
11 Corporation,

12 Plaintiff,

13 v.

14 CARL CHANG, et al,

15 Defendants.

Case No.: 2:12-cv-01359-TSZ

SECOND AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF AND  
DAMAGES

JURY TRIAL DEMANDED

16 Plaintiff MOD Super Fast Pizza, LLC (“MOD”), alleges as follows:

17 1. This is an action at law and in equity for trade dress infringement arising under  
18 15 U.S.C. § 1125(a) (“Lanham Act”); misappropriation of trade secrets arising under  
19 Washington State’s Trade Secrets Act (RCW 19.108 et seq.); and tortious interference with  
20 contractual relations, breach of contract, civil conspiracy, and permanent injunctive relief arising  
21 under the common law.

22 2. Defendants own and/or operate at least one restaurant in southern California  
23 under the name “Pieology Pizzeria.” Pieology Pizzeria’s design, look, feel, menu, and style of  
24 service are confusingly similar to those of Plaintiff MOD’s pizzeria restaurants. Pieology  
25 Pizzeria is not connected or affiliated with, or authorized by, MOD in any way. Defendants’  
26 restaurant is likely to cause confusion and to deceive consumers and the public regarding its  
source, and actually or likely dilutes the distinctive quality of MOD’s trade dress. Moreover,

1 Pieology Pizzeria operates its business using MOD's trade secrets and other proprietary know-  
 2 how without MOD's authorization and without compensation to MOD.

3 **I. PARTIES**

4 1. MOD is a limited liability company organized under the laws of the State of  
 5 Delaware, with its principal place of business in Seattle, Washington.

6 2. On information and belief, Defendant Carl Chang ("Mr. Chang") is a resident of  
 7 Orange County, California, and principal of CMCB Ventures, LLC ("CMCB").

8 3. On information and belief, CMCB Ventures, LLC is a corporation organized  
 9 under the laws of the State of Washington, with its principal place of business in Rancho Santa  
 10 Margarita, California. On information and belief, the managing member of CMCB Ventures,  
 11 LLC is publicly identified as "CMCB, LLC," an entity whose corporate status and history are  
 12 presently unknown to Plaintiff.

13 4. On information and belief, Defendant Pieology Spectrum, LLC ("Pieology LLC")  
 14 is a corporation organized under the laws of the State of Delaware, with its principal place of  
 15 business in Rancho Santa Margarita, California. On information and belief, Mr. Chang is a  
 16 member of Pieology LLC.

17 5. On information and belief, Defendant The Little Brown Box Pizza, LLC  
 18 ("LBBP") is a corporation organized under the laws of the State of Delaware, with its principal  
 19 place of business in Rancho Santa Margarita, California. On information and belief, LBBP owns  
 20 Defendant Pieology and Mr. Chang is the sole manager of LBBP.

21 6. On information and belief, Defendant Pieology Franchise, LLC ("Franchise") is a  
 22 corporation organized under the laws of the State of Delaware, with its principal place of  
 23 business in Rancho Santa Margarita, California. On information and belief, Franchise is wholly-  
 24 owned by LBBP, its sole member, and is managed by Mr. Chang.

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## **II. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction under section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338. This Court has jurisdiction over Plaintiff's related state and common law claims pursuant to 28 U.S.C. §§ 1338 and 1367.

2. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events, acts, or omissions on which the claims are based occurred in the Western District of Washington.

3. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants have engaged in acts or omissions within Washington causing injury, have engaged in acts or omissions outside of Washington causing injury within Washington, or have otherwise made or established contacts with Washington sufficient to permit the exercise of personal jurisdiction.

### III. FACTS

## **CREATION AND DEVELOPMENT OF MOD'S TRADE DRESS AND TRADE SECRETS**

1. MOD was created by a team consisting of Scott and Ally Svenson, James Markham, Michael Klebeck, and Seattle-based private investment firm the Sienna Group. Defendant CMCB, through its principal, Defendant Carl Chang, was one of MOD's early outside investors.

2. MOD was formed in Delaware in February 2008 under the name Social Pizza, LLC (“Social Pizza”), and became licensed to do business in Washington State that same year. In December 2008, Social Pizza, LLC changed its name to MOD Super Fast Pizza, LLC. All references in this Complaint to MOD therefore encompass and include by reference Social Pizza. The Chairman of MOD’s Board of Directors is Scott Svenson.

3. MOD currently owns and operates six restaurants in the Seattle metropolitan area: MOD1 (opened in 2008), located in One Union Square in downtown Seattle; MOD2 (opened in 2010), located in Bellevue, Washington; MOD3 (opened in 2010), located in the University

1 District of Seattle; MOD4 (opened in 2011), located in the Capitol Hill neighborhood of Seattle;  
 2 MOD5 (opened in 2011), located in Lynnwood, Washington; and MOD6 (opened in 2012),  
 3 located in the Seattle Center area of Seattle.

4       4. More MOD locations in the greater Puget Sound area are under construction and  
 5 will open very soon. Additionally, Plaintiff has the ability, intent, and strategic plan to expand  
 6 its operations in the near future to other west coast markets, including but not limited to southern  
 7 California.

8       5. From the day the first MOD restaurant opened, MOD has featured a distinctive,  
 9 non-functional combination of design, look, feel, menu, and style of service. These  
 10 characteristics are the product of significant effort, time, financial resources, commitment, and  
 11 professional training and experience expended by MOD and its members, principals, employees,  
 12 and agents. The word “MOD” itself stands for “Made On Demand,” a reference to the made-on-  
 13 demand feature of MOD’s personal pizzas, which are cooked at a very high temperature in  
 14 MOD’s gas-fired display ovens. The word “MOD” also refers to British and American “Mod”  
 15 culture of the late 1950s and early 1960s, which is reflected in various “retro” design elements of  
 16 MOD’s pizza restaurants, as well as to the word “modern,” which is reflected in MOD’s  
 17 innovative approach to delivering artisan-quality products as part of a fast food experience.

18       6. Since introducing its trade dress, MOD has expended substantial resources  
 19 promoting its restaurants and their distinctive, non-functional combination of features. As a  
 20 result of MOD’s continuous and exclusive use of its trade dress in connection with its pizza  
 21 restaurants, consumers now recognize and associate the MOD trade dress with MOD and  
 22 identify MOD as the source of MOD’s products and services.

23       7. The recognition and popularity of the MOD trade dress is evident from popular  
 24 press reports, including the following:

25       If you’re a fan of ‘clean and simple,’ you’ll enjoy MOD’s decor. The restaurant  
 26 has a retro feel to it that’s both friendly and upbeat, with high ceilings and plenty  
 of booths and tables at which to sit. It’s big-group friendly, so if you and 12 of  
 your best friends are all craving gourmet pizza, you won’t feel crammed at  
 MOD...

1 As for the service, it's fast. When your pie's ready, MOD's friendly 'squad'  
 2 members will shout your name so you know to pick it up. It's a little exciting  
 3 when that happens — makes you feel special and actually adds to the whole  
 4 'individualized' experience.

5 *The Daily of the University of Washington*, "Chow Time: Eating With Kat  
 6 Chow," June 23, 2010.

7 Located across the street from Bellevue Square, the restaurant has a super slick,  
 8 hip, modern vibe. MOD stands for Made On Demand and that's exactly what  
 9 happens. Choose one of their 10 specialty pizzas or create your own. Then it is  
 10 made right before your eyes and quickly placed in their super hot oven. Less than  
 11 five minutes later, they are calling your name to pick up your pizza.

12 The pizzas are slightly larger than a regular personal size pizza and are simply  
 13 made with fresh ingredients. The crust is thin with a puffy edge that shows  
 14 blistering and charring from the hot oven...Every time we leave this restaurant,  
 15 we lament that there isn't a place like this closer to home. Maybe it's a good  
 16 thing that there isn't one in our neighbourhood [sic]. The quality, service and  
 17 price would have us here every week.

18 *EatPNW* [eatpnw.com], "MOD Pizza," June 11, 2011.

19 The idea at MOD Pizza is tasty simplicity — an artisan-style, thin-crust pizza,  
 20 moderately priced and served to the customer with speedy efficiency.

21 MOD, which stands for "made-on-demand," uses only quality, fresh ingredients  
 22 with homemade sauce and dough.

23 The great catch is an unbeatable price of \$6.88 for a single topping or add on  
 24 everything but the kitchen with all 28 topping choices.

25 Their superhot 800-degree stone ovens cook up the pizzas at a fast pace, and  
 26 when we've eaten there (seven times at last count) our pizzas were done in less  
 than five minutes.

27 *Seattle Times*, "MOD's pizzas are fast, tasty, and inexpensive," January 13, 2012.

28 8. As a result of MOD's extensive use and promotion of its trade dress, MOD has  
 29 built up and now owns valuable goodwill that is symbolized by and derived from the trade dress.

30 9. MOD's valuable trade secrets include its dough and sauce recipes; specific  
 31 cooking equipment and pizza-making techniques; and confidentially developed trade names,  
 32 design elements, and branding concepts. These trade secrets were developed by MOD's creators  
 33 and founders over the course of years, through the expenditure of substantial time, effort, and  
 34 resources. For example, the name "Pieology" and related design elements were developed by

1 MOD using MOD's resources. MOD chose "MOD" over "Pieology" to be the name for its pizza  
 2 restaurants.

### 3 DEFENDANTS' BACKGROUND WITH MOD

4 10. In April 2008, MOD co-founder James Markham became a member and officer  
 5 of, unit holder in, and employee of MOD. In exchange for 400 "Class B Units," Mr. Markham  
 6 agreed to contribute to MOD "all of Markham's goodwill, right, title and interest in and to  
 7 [MOD's] Intellectual Property...including, without limitation...all intellectual property rights  
 8 related to (directly or indirectly) any transferred Intellectual Property."

9 11. Through a Contribution Agreement he entered with MOD, Mr. Markham agreed  
 10 that the "Intellectual Property" he contributed to MOD includes "pizza recipes"; "proprietary and  
 11 confidential information, including know how and techniques related to the business of MOD";  
 12 "logos, trade names, trade dress, trademarks, service marks"; and "all embodiments of the  
 13 foregoing in any form and embodied in any media."

14 12. Through a Confidentiality and Invention Assignment Agreement (the  
 15 "Assignment Agreement") he entered with MOD, Mr. Markham agreed, among other things, that  
 16 MOD's "Intellectual Property"—including the Intellectual Property contributed by Mr. Markham  
 17 —remains the "exclusive property" of MOD. Mr. Markham further agreed to "maintain the  
 18 confidentiality" of MOD's "Trade Secrets" and "Proprietary Information"; to "hold in strict  
 19 confidence" MOD's "Intellectual Property and Proprietary Information and all Trade Secrets";  
 20 and not to "distribute, disclose or use any of it except as authorized by [MOD] and for [MOD's]  
 21 benefit."

22 13. Mr. Markham agreed that the terms of the Assignment Agreement would remain  
 23 in force during his employment by MOD and "for an indefinite period following" his  
 24 employment. Mr. Markham agreed to the reasonableness of the terms of the Assignment  
 25 Agreement, including the terms referenced above.

26 14. Through a Member Agreement he entered with MOD, Mr. Markham agreed that  
 he would "not at any time, whether during or after his employment by [MOD], take or use, or

1 otherwise disclose to anyone, any Confidential Information of [MOD] or any affiliate thereof,  
 2 except as necessary to perform his duties hereunder...” Mr. Markham’s Member Agreement  
 3 defines “Confidential Information” to include “any and all trade secrets, ideas, recipes,  
 4 suggestions, innovations, conceptions, discoveries, strategies, improvements, technological  
 5 developments, methods, processes, specifications, formulae, compositions, techniques, systems,  
 6 computer software and programs, notes, memoranda, work sheets, lists of actual or potential  
 7 customers and suppliers, pricing information and policies, works of authorship, products, data,  
 8 and information in any form, which concern or relate to any aspect to the actual or contemplated  
 9 business of [MOD] and which are stamped ‘confidential’ or are otherwise treated as confidential  
 10 by [MOD]....”

11       15.     Mr. Markham and MOD subsequently agreed to terminate Mr. Markham’s  
 12 employment by, and membership in, MOD. Mr. Markham agreed to sell his ownership interest  
 13 in MOD back to MOD. In connection with the purchase and sale of Mr. Markham’s ownership  
 14 interest in MOD, Mr. Markham and MOD entered a Waiver and Release Agreement (referred to  
 15 herein as the “Separation Agreement”). Through the Separation Agreement, and among other  
 16 things, Mr. Markham (a) released “any claim, interest or right he may have or purport to have in  
 17 any intellectual property or any other property related to or owned by MOD”; and (b) entered a  
 18 noncompete agreement with MOD.

19       16.     Pursuant to Mr. Markham’s noncompete agreement, Mr. Markham agreed that for  
 20 18 months following the effective date of the Separation Agreement (January 11, 2010), he  
 21 would not “directly or indirectly, do anything in the pizza business or industry, regardless of  
 22 location, that has any of the following characteristics: individual (made-on-demand) pizzas  
 23 constructed by an individual builder interacting with the customer; all pizzas are the same price  
 24 regardless of toppings; using the same brand of oven used by MOD.” Mr. Markham further  
 25 agreed that “in perpetuity” he is prohibited from using, among other things, MOD’s pizza recipe;  
 26 “any reference to ‘made-on-demand’ or any other element or derivative of the MOD branding or  
 design.”

17. Mr. Markham's noncompete agreement did not expire until July 2011.

18. On or about March 1, 2010, Mr. Markham entered into an agreement as an independent contractor with Defendant LBBP to "assist" LBBP "in the planning, organizing, execution, monitoring, management of resources and control of [LBBP] pizza restaurant concept."

19. On or about June 21, 2010, Mr. Markham also entered into an assignment and confidentiality agreement with Defendant LBBP, purporting to sell to LBBP the name "Pieology" and intellectual property including trade secrets and trade dress associated with the name. Upon information and belief, LBBP remitted payment to Mr. Markham for these rights and currently purports to own this intellectual property.

20. In May 2008, Defendant CMCB, through its principal, Defendant Carl Chang, became a member of and investor in MOD by purchasing 150 "Class A Units" in MOD.

21. In becoming a member of MOD, CMCB agreed to be bound by MOD’s Limited Liability Company Agreement (the “LLC Agreement”). In so doing, CMCB acknowledged, among other things, that it “may have access to proprietary and confidential information regarding [MOD], its products, customers and strategic plans.” CMCB further acknowledged that “such information is of great value to [MOD] and that such information has been acquired by [it] in confidence.” CMCB agreed that it would “not at any time reveal, divulge, or make known, except as authorized by [MOD] or required on its behalf or as required pursuant to legal or administrative process, any information of a proprietary or confidential nature concerning [MOD] or its business....” As a member of MOD, Mr. Chang received regular confidential updates regarding operational and strategic issues facing the company

## **DEFENDANTS' UNLAWFUL ACTIVITIES**

22. On information and belief, Defendant Chang and Mr. Markham formed Pieology LLC in March 2010—less than three months after Mr. Markham signed the Separation Agreement containing an 18-month noncompete agreement. Pieology LLC became licensed to

1 do business in California that same year. Pursuant to these efforts, on March 1, 2010, Defendant  
 2 LBBP contracted for Mr. Markham's services to assist with its pizza restaurant concept.

3       23. On information and belief, Mr. Markham sold to Defendant LBBP his alleged  
 4 ownership interest in the name "Pieology" and the intellectual property associated with the name  
 5 including trade secrets, trade dress and confidential information in Jun 2010, while Mr. Markham  
 6 was subject to the terms of the Separation Agreement and Assignment Agreement.

7       24. On information and belief, Pieology LLC opened Pieology Pizzeria ("Pieology")  
 8 in Fullerton, California in December 2010. Mr. Markham publicly represents that he "created"  
 9 "everything you see, feel, touch and eat" at Pieology Pizzeria. In so doing, Mr. Markham acted  
 10 in concert with, on behalf of, and for the benefit of Defendants by utilizing, relying on, sharing,  
 11 taking advantage of, exploiting, and communicating to third parties (a) the intellectual property  
 12 Mr. Markham had previously contributed to MOD and (b) the confidential information and trade  
 13 secrets to which Mr. Markham, CMCB, and/or Chang had access by virtue of their prior  
 14 relationships with MOD, and LBBP's supposed purchase of these intellectual property rights  
 15 from Mr. Markham in June 2010. This conduct has never been authorized or otherwise approved  
 16 by Plaintiff.

17       25. On information and belief, Mr. Markham is no longer a member of Pieology LLC  
 18 and no longer maintains an ownership interest in or professional role with respect to Pieology.  
 19 Chang, however, continues to maintain an ownership and operational interest in Pieology LLC  
 20 and Pieology. As a result, Defendants are benefitting directly from the unauthorized exploitation  
 21 of MOD's intellectual property, including its trade dress, trade secrets, and confidential  
 22 information.

23       26. Pieology publicly represents that it "prides itself on providing the best tasting,  
 24 healthiest kustom [sic] pizza in the world. Using only the freshest ingredients, Pieology provides  
 25 smoking hot pizzas in under 5 minutes."

26       27. Pieology's design, look, feel, menu, and style of service are confusingly similar to  
 those of Plaintiff MOD's restaurants. For example:

1                             (a)     Like MOD, Pieology offers individualized pizzas that are constructed by  
 2 an individual builder who interacts directly with the customer; made to order; cooked at a high  
 3 temperature in display ovens visible to the customer; and served within a few minutes.

4                             (b)     Like MOD, Pieology offers unlimited toppings on its individualized pizzas  
 5 for a fixed price.

6                             (c)     Like MOD, Pieology offers a limited menu of pre-designed pizzas—i.e.,  
 7 pizzas with toppings already selected. Like MOD, Pieology identifies these pre-designed pizzas  
 8 by number (1-10 in the case of MOD; 1-7 in the case of Pieology), and offers them for the same  
 9 fixed price as a personally customized pizza. Additionally, a number of Pieology's pre-designed  
 10 pizzas are virtually the same as MOD's. For example, the topping on Pieology's pre-designed  
 11 pizza "#3" are mozzarella, gorgonzola, barbecue sauce, chicken, red onion, and cilantro; while  
 12 the toppings on MOD's pre-designed pizza "#10 [Caspian]" are mozzarella, gorgonzola,  
 13 barbecue sauce, barbecue chicken, and sliced red onions.

14                             (d)     Like MOD, Pieology offers, in addition to pizza, a bite-sized product  
 15 made from pizza dough garnished with the customer's choice of either cinnamon (MOD and  
 16 Pieology); garlic (MOD); or "herb" (Pieology). At MOD, this product is called a "knot." At  
 17 Pieology, this product is called a "strip."

18                             (e)     Like MOD, Pieology offers salads in addition to pizza and  
 19 "strips"/"knots."

20                             (f)     Pieology's interior design bears a confusing resemblance to that of MOD.  
 21 For example, the "make line" at Pieology where pizzas are prepared resembles MOD's "make  
 22 line" insofar as the customer's order is taken in a similar manner and the employee constructing  
 23 the pizza does so in full view of the customer, with ingredients displayed and assembled along a  
 24 long, horizontal counter. Additionally, among other similarities, Pieology's interior signage,  
 25 furniture, surface materials (e.g., laminates), table layout, banquette seating, flooring material,  
 26 lighting, exposed ductwork, and roll-up garage door bear a confusing resemblance to those of  
 MOD.

(g) Pieology's menu, in its presentation, layout, and formatting, bears a confusing resemblance to MOD's menu.

(h) Like MOD, Pieology sells Hostess “Ding Dongs” individually wrapped in aluminum foil for \$1.00 each. Like MOD, Pieology even displays the Ding Dongs on a circular, metal stand placed next to the restaurant’s cash registers so that customers may purchase one as they are checking out. And while they are checking out, Pieology’s customers stand under a “Pay Up” sign that is very similar to signs found above the cashiers at MOD.

(i) Pieology, like MOD, presents its cooked pizzas on a round tray lined with brown wax paper with the customer's name handwritten in black marker; and like MOD, the cooks at Pieology shout out the customer's name when his order is ready.

(j) The size of the pizzas at Pieology are virtually identical to those sold at MOD and bear the same slightly puffed, crispy, and charred edges yielded by high-temperature cooking in a gas-fired display oven.

28. Defendants' use of confusingly similar imitations of Plaintiff's trade dress is likely to deceive, confuse, and mislead prospective purchasers and purchasers into believing that Pieology is authorized by, or in some manner associated with, Plaintiff, which it is not. Indeed, actual customer confusion of Pieology with MOD has already occurred. This actual and likelihood of confusion, mistake, and deception engendered by Defendants' misappropriation of Plaintiff's trade dress, trade secrets, and confidential information is causing irreparable harm to the goodwill created by MOD's trade dress and dilutes the distinctiveness of MOD's trade dress.

29. MOD has been and continues to be deprived of the benefits of its contractual agreements with Mr. Markham and Chang.

30. On information and belief, Defendants knowingly, willfully, intentionally, and maliciously adopted and used Plaintiff's trade secrets, confidential information, and confusingly similar imitations of Plaintiff's trade dress.

31. Pieology publicly represents that it is “fast expanding” and, on information and belief, is actively pursuing an additional location and potential franchise opportunities. As part

1 of these expansion efforts, LBBP formed Franchise sometime in August 2012 as a vehicle for  
 2 licensing franchisees who desire to own and operate their own Pieology restaurants. Franchise  
 3 enters into and executes franchising and area development agreements with franchisees on behalf  
 4 of Defendants. On information and belief, Franchise has already entered into numerous  
 5 franchise and area development agreements and is (or will be) the entity directly receiving  
 6 upfront franchise fees and ongoing royalties from Pieology franchise operators. On information  
 7 and belief, this expansion will involve Defendants' continuing to engage in the misconduct  
 8 described herein and substantially increase MOD's damages and the likelihood of confusion to  
 9 consumers.

#### 10 IV. CLAIMS AND CAUSES OF ACTION

##### 11 Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)

12 1. Plaintiff realleges the preceding paragraphs and incorporate them by reference.

13 2. MOD's trade dress, as embodied by a distinctive combination of design, look,  
 14 feel, menu, and style of service, is nonfunctional. In other words, the total sensory experience,  
 15 including the visual appearance and ambiance, of MOD's restaurants constitutes protectable  
 16 trade dress.

17 3. MOD's trade dress is one of a virtually infinite number of ways of designing a  
 18 pizza restaurant, and protecting MOD's unique and distinctive combination of design and service  
 19 elements will in no way deprive other pizza restaurants of operational efficiencies or functional  
 20 effectiveness.

21 4. MOD's trade dress serves a source-identifying role because it is sufficiently  
 22 distinctive as to be capable of identifying and distinguishing MOD as the source of MOD's  
 23 products and services in the minds of consumers.

24 5. Through their use of confusingly similar imitations of Plaintiff's trade dress,  
 25 Defendants have created a likelihood that the public will be misled into believing that Pieology's  
 26 products and services are actually MOD's or somehow affiliated with or approved by MOD,  
 which they are not.

1       6. Defendants' activities, as described in the preceding paragraphs, have caused and,  
 2 unless enjoined by this Court, will continue to cause a likelihood of confusion of members of the  
 3 public and pecuniary injury to Plaintiff. MOD's damages, including pecuniary harm, may not be  
 4 fully compensable through monetary relief, and as such, Plaintiff lacks an adequate remedy at  
 5 law. Moreover, Defendants' infringement of trade dress has been willful and intentional, such  
 6 that this is an exceptional case under 17 U.S.C. § 1117(a)(3).

7       **Count 2: Misappropriation of Trades Secrets Under RCW 19.108 et seq.**

8       7. Plaintiff realleges the preceding paragraphs and incorporates them by reference.

9       8. MOD's trade secrets consist of information, including designs, methods,  
 10 formulas, techniques, studies, and processes, that derive independent economic value from not  
 11 being generally known to, and not being readily ascertainable through proper means by, persons  
 12 who can obtain economic value from their disclosure or use. Among other things, MOD's trade  
 13 secrets include its dough and sauce recipes; specific cooking equipment and pizza-making  
 14 techniques; and confidentially developed trade names, design elements, and branding concepts,  
 15 including the "Pieology" name.

16       9. MOD's trade secrets (including recipes and pizza-making techniques) are  
 17 responsible for the unique flavor and texture of MOD pizzas, which keep customers coming back  
 18 to eat at MOD again and again.

19       10. MOD has made efforts that are reasonable under the circumstances to maintain  
 20 the secrecy of its trade secrets.

21       11. Defendants—through and in concert with Mr. Markham—have directly,  
 22 vicariously, and/or contributorily misappropriated MOD's trade secrets.

23       12. Defendants are continuing to misappropriate MOD's trade secrets without  
 24 Plaintiff's authority or consent and without compensation to MOD.

25       13. Plaintiff has been harmed by Defendants' misappropriation of MOD's trade  
 26 secrets in an amount to be proved at trial. Moreover, to the extent that the harm to MOD  
 resulting from Defendant's misappropriation of MOD's trade secrets and confidential

1 information cannot be fully compensated by money damages, MOD has no adequate legal  
 2 remedy and injunctive relief is necessary. The harm to MOD is ongoing and will continue unless  
 3 and until Defendant's misappropriation is permanently enjoined.

**Count 3: Tortious Interference with Contractual Relations**

5 14. Plaintiff realleges the preceding paragraphs and incorporate them by reference.

6 15. Mr. Markham entered valid and enforceable contracts with Plaintiff, including the  
 7 Member Agreement (which itself included an employment agreement); Contribution Agreement;  
 8 Assignment Agreement; and Separation Agreement (which itself included a noncompete  
 9 agreement) referenced above.

10 16. Defendants were aware of Mr. Markham's contracts with Plaintiff.

11 17. Defendants wrongfully induced or encouraged, by unlawful means, Mr. Markham  
 12 to breach various provisions of his contracts with Plaintiff, including, for example, by breaching  
 13 the obligation of confidentiality.

14 18. Plaintiff has been damaged by Defendants' interference with Plaintiff's  
 15 contractual relations with Mr. Markham in an amount to be proved at trial.

**Count 4: Breach of Contract**

17 19. Plaintiff realleges the preceding paragraphs and incorporate them by reference.

18 20. One or more Defendants entered valid contractual agreements with Plaintiff,  
 19 including an agreement that Defendants would be bound by the terms of the LLC Agreement.  
 20 The LLC Agreement includes confidentiality provisions requiring Defendants to maintain the  
 21 confidentiality of sensitive financial and other business information provided pursuant to  
 22 membership in MOD.

23 21. Defendants breached that agreement by, among other things, revealing, divulging,  
 24 and making known, without due authority, MOD's proprietary and confidential information.

25 22. Plaintiff performed its obligations under its contractual agreements with  
 26 Defendants.

23. Plaintiff has suffered damages, including, among other things, infringement of its trade dress, loss of goodwill, and loss of the benefit of its bargain.

24. Defendants' breach of their agreements with Plaintiff have proximately caused Plaintiff damages.

## **Count 5: Civil Conspiracy**

25. Plaintiff realleges the preceding paragraphs and incorporates them by reference.

26. Defendants combined with Mr. Markham to accomplish unlawful purposes, including trade dress infringement; misappropriation of trade secrets; tortious interference with contractual relations; and breach of Defendants' and Mr. Markham's respective contractual duties to Plaintiff.

27. Defendants entered an agreement with Mr. Markham to accomplish the conspiracy described herein.

28. Plaintiff has been damaged by Defendants' conspiracy with Mr. Markham in an amount to be proved at trial.

## **Count 6: Permanent Injunctive Relief**

29. Plaintiff realleges the preceding paragraphs and incorporate them by reference.

30. Defendants' activities, as described in the preceding paragraphs, have caused and, unless enjoined by this Court, will continue to cause: a likelihood of confusion of members of the public; further misappropriation of Plaintiff's trade secrets; further tortious interference with Plaintiff's contractual relations with Mr. Markham; further breaches of Defendants' contractual obligations to Plaintiff; and, additionally, injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

31. Plaintiff lacks an adequate remedy at law as the harm caused by Defendants is of a kind and degree that may not be readily measurable and/or is not compensable by money damages alone.

32. Plaintiff therefore requests that the Court grant Plaintiff permanent injunctive relief from Defendants' misconduct.

## V. JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks the following relief against Defendants:

- A. Permanent injunctive relief as described herein;
  - B. An award of damages in an amount to be proved at trial;
  - C. An award of reasonable attorneys' fees and costs to the extent permitted by law;
  - D. Such other and further legal and equitable relief as the Court may deem just and

proper.

DATED this 12th day of November, 2013.

# STOKES LAWRENCE, P.S.

By: s/ David A. Linehan

David A. Linehan (WSBA #34281)

By: s/ Theresa H. Wang

Theresa H. Wang (WSBA #39784)

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Attorneys for Plaintiff MOD Super Fast Pizza, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2013, I caused the foregoing *Second Amended Complaint for Injunctive Relief and Damages* to be:

- electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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